



**State of New Jersey**  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

**PHILIP D. MURPHY**  
*Governor*

**LT. GOVERNOR SHEILA Y. OLIVER**  
*Commissioner*

**FINAL DECISION**

**June 27, 2023 Government Records Council Meeting**

Scott Madlinger  
Complainant

Complaint No. 2021-207

v.

Berkeley Township Police Department (Ocean)  
Custodian of Record

At the June 27, 2023 public meeting, the Government Records Council (“Council”) considered the June 20, 2023 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian failed to disclose one of five records responsive to the Complainant’s OPRA request in violation of N.J.S.A. 47:1A-6. However, the Council declines to order disclosure of the record because the Custodian certified she disclosed it to the Complainant on September 9, 2021.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 27<sup>th</sup> Day of June 2023

Robin Berg Tabakin, Esq., Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: June 29, 2023**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 27, 2023 Council Meeting**

**Scott Madlinger<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-207**

v.

**Berkeley Township Police Department (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via e-mail of “all opra (sic) requests received on July 12, 2021.”

**Custodian of Record:** Marcy Novellino<sup>3</sup>

**Request Received by Custodian:** August 9, 2021

**Response Made by Custodian:** August 19, 2021

**GRC Complaint Received:** August 24, 2021

**Background<sup>4</sup>**

**Request and Response:**

On August 9, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 19, 2021, the Custodian responded in writing to the Complainant’s request, attaching copies of four (4) OPRA requests.

**Denial of Access Complaint:**

On August 24, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that on August 6, 2021, the Custodian submitted a certification in Madlinger v. Berkeley Twp. Police Dep’t (Ocean), GRC Complaint No. 2021-169<sup>5</sup> affirming that on July 12, 2021, he submitted twelve (12) OPRA requests.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Robin La Bue, Esq., of Rothstein, Mandell, Strohm, Halm & Cipriana, P.C. (Toms River, NJ).

<sup>3</sup> Retired employee Sandra Brelsford, Supervisor of Police Info. Records, interacted exclusively with the Complainant and the GRC staff during the course of this complaint. As such, she is referred to as the “Custodian” herein.

<sup>4</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

<sup>5</sup> That complaint was adjudicated at the Council’s April 25, 2023 meeting.

The Complainant stated that on August 9, 2021, he submitted an OPRA request to the Custodian for copies of all OPRA requests received on July 12, 2021. The Complainant stated that on August 18, 2021, in reply to his reminder that the response to his request was due, the Custodian requested a one-day extension of time.<sup>6</sup> The Complainant asserted that on August 19, 2021, the Custodian responded by disclosing copies of four (4) OPRA requests that had been received on July 12, 2021.

Statement of Information:

On September 3, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on August 9, 2021. The Custodian certified that on August 18, 2021, she requested an extension of time until August 19, 2021, to respond to the request. The Custodian certified that four (4) e-mailed requests were found to be responsive to the request and that she disclosed the responsive records to the Complainant on August 19, 2021.

Additional Submissions:

On September 3, 2021, the GRC e-mailed the Custodian a request for additional information to supplement the SOI. The GRC informed the Custodian that there appeared to be a discrepancy in the number of OPRA requests the Custodian received on July 12, 2021. The GRC stated that the Complainant alleged the Custodian previously certified that the Complainant submitted twelve (12) OPRA requests on July 12, 2021; however, she certified in the SOI that four (4) copies of requests were found to be responsive to the request. The GRC asked the Custodian to provide a certification clarifying the discrepancy.

On September 9, 2021, the Custodian replied to the GRC’s request for additional information. The Custodian certified that Item 12 in the SOI for GRC 2021-169 erroneously stated that twelve (12) OPRA requests were received from the Complainant on July 12, 2021. The Custodian stated that she had intended to reflect the number of requests received from the Complainant for the week of July 12, 2021. The Custodian certified that the error was subsequently corrected by another certification she submitted for GRC 2021-169.<sup>7</sup> The Custodian certified that the Complainant submitted four (4) OPRA requests to the Berkeley Township Police Department (“BTPD”) on July 12, 2021, and copies of the requests were provided to the Complainant in her response to the request. The Custodian further certified that the BTPD received one (1) OPRA request from a requester other than the Complainant on July 12, 2021, which the Custodian attached as Exhibit A. The Custodian also certified that the Complainant submitted one (1) OPRA request to the Township Clerk on July 12, 2021, which the Custodian also attached.

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<sup>6</sup> Copies of the reminder and the subsequent request for an extension of time do not appear anywhere within the evidence of record.

<sup>7</sup> The GRC’s case file for GRC 2021-169 contains the referenced certification, dated August 12, 2021, correcting the number of requests that were received from the Complainant.

## Analysis

### Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In the OPRA request forming the basis of this complaint, although the Complainant worded his salutation “Dear Berkeley Township,” he addressed the request to the Township’s custodian for BTPD records. Further, in the complaint, the Complainant stated that the public agency from which records were requested is “Berkeley Township Police Dept[.]” and the custodian to whom the records request was submitted is “Sandra Brelsford,” the custodian of BTPD records. Moreover, in the Complainant’s August 23, 2021 e-mail to the GRC forwarding the complaint, he stated, “attached is a denial of access complaint against berkeley township police department (sic).” For these reasons, the GRC will confine its analysis to a request for all OPRA requests received by the BTPD on July 12, 2021.

The Custodian certified that the Complainant submitted four (4) OPRA requests to the BTPD on July 12, 2021, and that she disclosed these records to the Complainant on August 19, 2021. However, the evidence of record reveals that there was a fifth OPRA request submitted to the BTPD on July 12, 2021, which is the request the Custodian attached as Exhibit A to her September 9, 2021 reply to the GRC’s request for additional information. This record was not provided to the Complainant in the Custodian’s initial disclosure.

Therefore, the Custodian failed to disclose one of five records responsive to the Complainant’s OPRA request in violation of N.J.S.A. 47:1A-6. However, the Council declines to order disclosure of the record because the Custodian certified she disclosed it to the Complainant on September 9, 2021.

### Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian failed to disclose one of five records responsive to the Complainant’s OPRA request in violation of N.J.S.A. 47:1A-6. However, the Council declines to order disclosure of the record because the Custodian certified she disclosed it to the Complainant on September 9, 2021.

Prepared By: John E. Stewart

June 20, 2023